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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Advanced Television Systems
and Their Impact Upon the
Existing Television Broadcast
Service

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) MM Docket No. 87-268
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TO: The Commission

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JUL 18 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

**COMMENT ON AND OPPOSITION TO
PETITIONS FOR RECONSIDERATION OF
THE FIFTH AND SIXTH REPORTS AND ORDERS
SUBMITTED BY
THE ASSOCIATION FOR MAXIMUM SERVICE TELEVISION, INC.
AND THE BROADCASTERS CAUCUS**

July 18, 1997

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LIST OF EXHIBITS

- Exhibit 1: An Evaluation of the FCC RF Mask for the Protection of DTV Signals from Adjacent Channel DTV Interference, the Advanced Television Technology Center, Inc. (July 17, 1997).
- Exhibit 2: Description of Methodology to Create Maps.
- Exhibit 3: Illustrations of Service Loss as a Result of the Revised Planning Factors for DTV-to-DTV Adjacent Channels.
- Exhibit 4: List of DTV-to-DTV Adjacent Channels that Are Short Spaced.

SUMMARY

The Association for Maximum Service Television ("MSTV") and members of the Broadcasters Caucus submit this Opposition to reaffirm our support for the basic approach taken by the Commission in the Fifth and Sixth Reports and Orders, as set forth in the Petition for Clarification and Partial Reconsideration filed by MSTV, the Broadcasters Caucus and Other Broadcasters (the "Broadcasters' Petition"), and to oppose proposals to abandon or substantially restructure this basic approach.

In addressing the petitions for reconsideration, the Commission should stay true to the fundamental principles on which the nation's television system was built. It should reject proposals that the Commission retreat from the country's long-standing, public interest commitment to wide-area service and the primacy of full power service over secondary low power services. At the same time, the Commission should permit limited exceptions to some of the technical constraints underlying the DTV allotments/assignments so as to more faithfully implement to the goals of replication and maximization.

Specifically, the Commission should:

- Take all reasonable steps to preserve the public's wide-area NTSC service;
- Reject any proposal that erodes the longstanding interference protection standard of the NTSC service or that retreats from a general protection of Grade B service during the roll-out of DTV;
- Uphold its reasoned decision to maintain the secondary status of LPTVs and translators as a proper exercise of its discretion, consistent with its Section 307(b) mandate to determine the "fair, efficient, and equitable distribution" of television services;
- Reject the argument that alleged violations of the Sunshine Act render the new DTV rules invalid on the grounds that the Commission acted properly under an exception to the seven-day notice requirement and, in any event, no parties have been prejudiced by exercise of this exception;

- Provide adequate DTV-to-DTV adjacent channel interference protection;
- Reject the arguments of land mobile and public safety organizations urging further restrictions on the use of channels 60-69, and instead preserve and even expand on a limited and targeted basis the use of these channels for DTV allotments/assignments;
- Reject challenges to the Commission's handling of public interest obligations and financial qualification showings required for DTV stations; and
- Implement targeted corrections and clarifications in the DTV allotment/assignment process and institute additional flexibility in that process, as set forth in the Broadcasters' Petition.

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INTRODUCTION

Of the 232 petitions to reconsider portions of the Fifth Report and Order and Sixth Report and Order,^{1/} few requested major reconstruction of the R&Os. Few questioned the basic commitment to transitioning today's television service to digital according to the principles the Commission developed with the broadcast industry and others over the past decade -- the principles that existing service should be replicated and maximized in the DTV environment and that interference should be minimized. Many supported or accepted the basic structure adopted in the two R&Os.^{2/}

^{1/} Fifth Report and Order, MM Docket No. 87-268, FCC 97-116 (adopted April 3, 1997, released April 21, 1997) ("Fifth R&O"); Sixth Report and Order, MM Docket No. 87-268, FCC 97-115 (adopted April 3, 1997, released April 21, 1997) ("Sixth R&O") (collectively, "R&Os").

^{2/} See, e.g., Petitions for Reconsideration of ABC, Inc.; Association of America's Public Television Stations and Public Broadcasting Service; CBS, Inc.; First Cullman Broadcasting, Inc.;
(continued...)

The Petition for Clarification and Partial Reconsideration filed by the Association for Maximum Service Television ("MSTV"), the Broadcasters Caucus^{3/} and other broadcasters (the "Broadcasters' Petition") supported the basic approach taken by the Commission in the R&Os, but pointed out the need for targeted corrections and clarification in the DTV allotment/assignment process, and requested additional flexibility in that process going forward. Here, MSTV and the Broadcasters Caucus reaffirm our support of the Commission's basic approach and oppose arguments that would require starting over or a major overhaul of that approach, thus delaying the roll-out of DTV and jeopardizing its viability.^{4/}

In addressing the petitions for reconsideration, the Commission should stay true to the basic balances and principles on which the nation's television system is built. It should reject proposals that the Commission retreat from the country's long-standing, public interest commitment to wide-area service and the primacy of full power service over

^{2/}(...continued)

Fox Television Stations, Inc.; Media General, Inc.; National Broadcasting Company, Inc.; National Translator Association; Pulitzer Broadcasting Company; Scripps Howard Broadcasting Company; and Tribune Broadcasting Company.

^{3/} The Broadcasters Caucus is an ad hoc group of broadcast organizations (ABC, ALTV, APTS, CBS, Chris-Craft, Fox, MSTV, NAB, NBC, PBS, and Tribune) that was formed in 1990 as a part of the Advanced Television Systems Committee to represent broadcasters on DTV issues. ALTV and Fox were not signatories to the Broadcasters' Petition. ALTV, APTS, PBS, and Fox are not signatories to this Opposition. Signatories to this Opposition support the general position taken herein, although may differ on some points and some may file independently.

^{4/} We respectfully request that the Commission not hold this Opposition to a strict 25 page limit in light of the need to address petitions relating to both the Fifth and the Sixth Reports and Orders and to adequately respond to the 232 petitions for reconsideration filed in this proceeding. We note that in connection with the petitions for reconsideration, the Commission recognized that an exception to the page limit was appropriate given the complexity and importance of the two FCC decisions involved.

secondary low power services. Instead, it should reaffirm the basic policy judgments that were made in the R&Os and are well supported by the record, including the right of stations to agree to accept interference. At the same time, the Commission should permit limited exceptions to some of the planning factors that shaped the DTV Allotments/Assignments so as to be more faithful to the goals of replication and maximization.^{5/} These exceptions, as described in the Broadcasters' Petition, will increase the service benefits of the DTV Allotments/Assignments and fortify the R&Os against those few petitioners that urge wholesale revamping of their basic principles.

Most of the petitions for reconsideration do not challenge the basic policy decisions contained in the R&Os, but instead seek remedies for specific DTV channel concerns. Many of these petitions are likely to be supplemented in light of the release of OET Bulletin No. 69.^{6/} As stated in MSTV's and NAB's Support of Commission Procedures (filed July 10, 1997), the Commission is wise to provide additional time to address these discrete DTV channel issues, and MSTV and other broadcasters plan to be helpful by suggesting targeted solutions to the DTV allotment/assignment problems in the three most congested regions of the country. However, to reduce confusion and burdensome

^{5/} "DTV Allotments/Assignments" refers to the paired channel plan contained in Appendix B to the Sixth R&O. Appendix B also contains service area, replication, interference, height and power, and other information. The "DTV Table of Allotments" is contained in 62 Fed. Reg. 26684, 26712-17 (1997) (Section 73.622(b)).

^{6/} More than 100 petitioners expressly commented on the absence of OET Bulletin No. 69 or the lack of information regarding the Commission's allotment methodology. On the same day that OET released OET Bulletin No. 69, the Commission released an order providing an additional period until August 22, 1997 for petitioners to supplement pending petitions for reconsideration of individual DTV allotments. See Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, Order, FCC 97-1377 (July 2, 1997).

revisions to the DTV Table of Allotments and a slew of complex Form 301s in the future, it is important that the Commission act on the policy and administrative issues raised in the Broadcasters' Petition and other petitions as soon as possible. In doing this, we urge the Commission to stay its course with respect to basic principles, but to provide more flexibility in DTV channel assignments and clarity in certain service rules to ensure that high quality DTV service is disseminated as broadly as possible without unnecessary and undesirable injury to the public's existing NTSC service.

I. THE FCC SHOULD ADHERE TO THE LONG-STANDING POLICY OF PROTECTING SERVICE TO ALL VIEWERS.

The few petitions that do suggest major revision to the DTV allotment/assignment approach reflected in the R&Os do not take sufficient account of the public interest values that have shaped this proceeding from the start and, indeed, have guided the development of television since the 1940's. These values emerged from the careful balancing that Section 1 of the Communications Act requires to make efficient, nationwide service available to all the people of the United States -- that is, as much television broadcast service as possible to as many people as possible.

A. Wide-Area Service Is A Bedrock Value.

Throughout the history of television regulation, the Commission has been beset by arguments that it should reduce service areas of some stations to implement some new service concept. Repeatedly, and rightly, the Commission has rejected these arguments because they do not promote an efficient, nationwide service -- not in NTSC and not in DTV. From early television regulation through today, the commitment to wide-area coverage and maximum universal service has permitted both UHF and VHF stations to serve

more people more effectively. This commitment surfaced in the 1960's in the debate over "deintermixing" VHF and UHF stations; in the 1970's in the decisions to limit the number of short-spaced and lower power VHF stations so as to promote the UHF service and preserve the VHF service; and in the 1980's and 1990's when the commitment to wide-area coverage and maximum universal service evolved in the context of cable and satellite competition to broadcasting (*e.g.*, the must-carry rules' and the Satellite Home Viewer Act's protection of Grade B service). In all, the FCC, supported by Congress, has endorsed the principle that safeguarding wide-area coverage while promoting competition and new services secures the most robust and ubiquitous television service to the *entire* public.

The first television allocation table sought to balance various competing interests by creating an equitable distribution of opportunities for television service to the entire country.^{7/} It did this, in part, by eschewing a single-minded focus on the population centers. Rather than concentrating scarce VHF channels exclusively in the cities where the larger audiences were located, the Commission took care to distribute the potential for wide-area signals "among smaller communities and sparsely settled areas."^{8/} In this first action, the Commission also committed itself to wide-area coverage by rejecting a proposal to squeeze in additional assignments that would reduce the interference-free coverage of stations. On the contrary, it adopted a table "based on the concept of affording each station

^{7/} The allocation decisions were made in 1945 (Docket 6780) and confirmed in the Sixth Report and Order, Docket Nos. 8736 and 8975, 41 F.C.C. 148 (1952).

^{8/} Id. at 188.

the widest coverage possible consistent with an efficient utilization of the spectrum and the satisfaction of the needs of the various cities and communities in the United States."^{9/}

The Commission has also encouraged "the larger and more effective use of radio in the public interest" (47 U.S.C. §303(g)) by promoting UHF service. This has involved the rejection of resurgent proposals to short-space new VHF allotments. The Commission stated that "we do not believe that the creation of numerous small VHF stations with very limited service areas would further the objectives of our nationwide television system."^{10/}

The Commission's later mileage separations policies reaffirmed its commitment to wide-area coverage.^{11/} Rather than licensing relatively few very powerful stations widely separated from each other or licensing numerous lower-powered stations very close to each other, the Commission chose a course that fosters wide-area coverage as well as a diversity of voices.^{12/} At the same time, it safeguards high technical quality. These policies, especially as they related to UHF stations,^{13/} recognized that wide-area service is

^{9/} Id.

^{10/} Second Report on Deintermixture, Docket No. 11532, 13 Rad. Reg. (P & F) 1571, 1575 (1956). See also Interim Policy on VHF TV Channel Assignments, Docket No. 13340, 21 Rad. Reg. (P & F) 1695, 1696 (1961) ("[i]t is the inescapable fact that the introduction of new VHF assignments through substandard spacings progressively approaches a point of diminishing returns where the service gains become outweighed by the resultant service losses.").

^{11/} For example, in the period from 1979 to 1988, MSTV filed opposition to 121 individual UHF short-spaced proposals. In all but eight cases the waivers were denied, the proposal was withdrawn or the applicant amended to a fully-spaced site.

^{12/} See VHF Drop-Ins, Docket No. 20418, 81 FCC 2d. 233, 235-240 (1980).

^{13/} Between 1971 and 1992 the FCC denied three VHF station waivers pursuant to its "UHF Impact" policy, which was designed to foster the growth of UHF (eight UHF station requests for
(continued...)

the only reliable guarantor of service to outlying areas, and minimizes the spectrum waste that occurs when interference due to short spacing destroys the service from both stations.

Whether or not the Commission should sustain this commitment to wide-area coverage has been raised as an issue in a few petitions,^{14/} although altering this commitment would be inconsistent with the most fundamental premise of this proceeding. From the start, the objective of the DTV proceeding has been the transition of television broadcasting from one technology to another, not the tearing down of existing service concepts in order to replace them with new ones. Especially with the adoption of the replication principle in the Sixth Further Notice of Proposed Rulemaking,^{15/} the Commission made clear that the principles underlying the existing service should be maintained in the new DTV environment.

In fact, the initial eligibility criteria for the DTV licenses^{16/} and Congress'

^{13/}(...continued)

waiver of the co-channel, adjacent channel or taboo separation rules were also denied). These actions are only the tip of the iceberg, however, because a great many requests for short-spacing waivers were resolved when applicants withdrew their applications or amended their proposals to fully-spaced sites following MSTV opposition and letters from the FCC requesting additional justification for the waiver.

^{14/} See Petition for Reconsideration of Association of Local Television Stations, Inc., MM Docket No. 87-268 (June 11, 1997) ("ALTV Petition"); Petition for Reconsideration of Sinclair Broadcasting Group, Inc., MM Docket No. 87-268 (June 13, 1997) ("Sinclair Petition"); Petition for Partial Reconsideration of the Fifth Report and Order and of the Sixth Report and Order, MM Docket No. 87-268 (June 13, 1997) ("Viacom Petition").

^{15/} Sixth Further Notice of Proposed Rulemaking, 11 FCC Rcd. 10968, 10974-75 (1996) ("Sixth Further Notice").

^{16/} In proposing to limit the initial eligibility for the DTV channels to existing broadcasters, the Commission stated:

[W]e are *not creating a new service*, and our eligibility restriction does not ultimately result in more spectrum for broadcasters or less spectrum for others. We are merely

(continued...)

reaffirmation of these criteria in the Telecommunications Act of 1996^{17/} were based on the premise that DTV was a technical upgrade rather than a new service. Part and parcel of the initial eligibility limitation is the expectation that existing audiences (and more) will be served by DTV, and rapid build-out requirements will ensure that they are served quickly. Failure to transport the value of wide-area coverage from the NTSC to the DTV arena would undermine this basic policy judgment, devalue DTV by disenfranchising viewers, and degrade the NTSC service at the critical time when it is relied upon to support DTV through its infancy and beyond.

B. Service Losses Are Untenable.

In light of the long record at the Commission, in the courts and in Congress of viewing with alarm even relatively small service losses, increased interference to the NTSC service and the disenfranchisement of DTV viewers should be shunned. Indeed, a major objective of the Grand Alliance digital system, sustained by broadcasters' heavy investment in the testing process and the Commission's broad support of it, was to achieve a technology that, to the greatest extent possible, would permit replication and maximization and avoid interference -- in short, to transition existing service to the new digital world.

^{16/}(...continued)

moving each existing broadcaster from one channel to a different channel in a one-for-one exchange designed to accomplish a number of long-term public interest goals. Broadcasters will be required to cease their analog operations after a relatively short period, thereby permitting a swift, certain transition to digital technology and a rapid recovery of spectrum for the benefit of the public.

Fourth Further Notice of Proposed Rulemaking/Third Notice of Inquiry, 10 FCC Rcd. 10540, 10545 (1995) (emphasis added) ("Fourth Further Notice"). This decision was reaffirmed in the Fifth R&O, ¶¶ 16-17.

^{17/} See 47 U.S.C. § 336(a)(1).

Broadcasters, in their comments to the Sixth Further Notice, noted that some of the non-consensual NTSC service losses and DTV service shortfalls being proposed in the DTV proceeding were inimical to the core traditions of broadcast regulatory policy.^{18/} Accordingly, Broadcasters submitted the prior holdings of the Commission and the courts that loss of service is *prima facie* contrary to the public interest.^{19/} In the Commission's transmitter relocation, deintermixture and short-spacing decisions, even relatively small service losses have not been tolerated. This has been especially important in the case of rural viewers who may receive their only service from the outer reaches (close to the edge of the Grade B contours) of one or only a handful of television stations.^{20/} These cases demonstrate that, in addition to preserving wide-area service, the Commission has jealously protected viewers' existing service.

^{18/} See Broadcasters Comments to the Sixth Further Notice of Proposed Rulemaking, MM Docket No. 87-268 (November 22, 1996) at 28-34. In most cases, the giving of a licensee's consent to accept more interference will be based on a calculation that such interference has little or no effect on the licensee's intended audience.

^{19/} Id.; see, e.g., *Hall v. FCC*, 237 F.2d 567, 572 (D.C. Cir. 1956); *New Jersey Public Broadcasting Authority*, 74 F.C.C.2d 602, 605 (1979).

^{20/} For example, the Commission denied a request to relocate a television tower where 621 people would have lost their only television service even though 275,000 would have gained service by virtue of the relocation. Relocation would also have deprived 4,279 people of access to more than one station and 5,055 people to their only Grade A signal. *Central Coast Television*, 14 F.C.C.2d 985 (1968). The Commission denied another station's request to construct a transmitter that would have been short-spaced by 38 miles on the grounds that, although 700,000 people would have gained service, 1,762 people would have lost their only television service and 59,000 others would have experienced a degradation of signal strength. *WLCY-TV*, 16 F.C.C.2d 506 (1969).

The Commission also has acted to further the provision of local service through waivers of the duopoly rule. For example, in one case, it noted that permitting further Grade B overlap by allowing a licensee to enlarge its service area would further the Commission's goal of remedying local service losses by returning local service to those who relied exclusively on distant signals. In re Application of Weigel Broadcasting Co., 11 FCC Rcd. 17202, 17205 (1996).

It was in passing the All Channel Receiver Act^{21/} that Congress most clearly expressed its intention to prevent service losses. Prior to the passage of this Act, the Commission carried out a limited deintermixture policy by which it created all-UHF and all-VHF markets so as to foster the development of the UHF service but at the expense of cutting back on wide-area VHF service. For example, in one case, the Commission replaced an *unused* VHF channel with a UHF channel, despite the fact that the VHF channel once in service would serve far more people. The Commission estimated that its decision would create a white area encompassing 5,834 people, but posited that this population would be served by translators and other stations.^{22/} Congress effectively rejected decisions like these that appeared to write off populations (even ones that were not yet, but could be, served). In response, it adopted the All Channel Receiver Act as a more effective way to promote UHF that would also not compromise wide-area VHF service.^{23/} In fact, an estimated 70% of the hearings on the Act examined the deintermixture policy, not the merits of requiring UHF reception in television sets.^{24/} Knowing that four deintermixture cases remained pending after passage of the Act, both the House and Senate Committee reports noted "the Commission's statement that in deciding these particular cases it will give great

^{21/} Pub.L.No. 87-529, 76 Stat. 150 (codified at 47 U.S.C. §§ 303(s), 330(a)).

^{22/} Table of Assignments, Television Broadcast Stations, Bakersfield et. al., 21 Rad. Reg. (P & F) 1549 (1961).

^{23/} See, e.g., S. Rep. No. 1526, 87th Cong., 2d Sess. (1962), reprinted in 1962 U.S.C.C.A.N. 1873, 1877; 108 Cong. Rec. 7,438 (statement of Rep. Celler) (referring to Commission's assurance that it would not proceed on eight pending deintermixture cases if the legislation were enacted).

^{24/} 108 Cong. Rec. 7,441 (statement of Rep. Younger).

weight to any loss of service to the public which would result from the abandonment of VHF channels allocated to the particular communities involved in these cases."^{25/}

The Supreme Court recently reaffirmed Congress' commitment to existing television service in the different context of the must-carry case.^{26/} There, the Court affirmed the judgment that Congress' goals would not "be satisfied by the preservation of a rump broadcasting industry providing a minimum of broadcast service to Americans without cable" and that must-carry requirements were appropriate tools to satisfy these goals.^{27/} By the same token, the goals of the Communications Act would not be satisfied by a rump broadcasting service marginalized by substantial new interference. In assessing the reasonableness of Congress' legislative judgment, the Turner Court also took account of the importance of widespread coverage (not intensity of signal) to the survival of free over-the-air broadcasting.^{28/} At this critical time when revenue from NTSC service will support heavy investments in DTV stations and, in the intermediate future, as DTV struggles to become a viable successor of NTSC service, the Commission should take all reasonable steps to preserve the public's wide-area NTSC service.

^{25/} 108 Cong. Rec. 7,444 (quoting H.R. Rep. No. 1559, 87th Cong. 2d Sess. (1962)); S. Rep. No. 1526, 87th Cong. 2d Sess. (1962), reprinted in 1962 U.S.C.C.A.N. 1873, 1877.

^{26/} Turner Broadcasting System v. FCC, 65 U.S.L.W. 4209 (1997) (citations are to the *slip op.*) (U.S. March 31, 1997).

^{27/} Id. at 9.

^{28/} See id. at 25-31.

**II. THE REPLICATION PRINCIPLE SHOULD BE PRESERVED,
SUBJECT TO VOLUNTARY AGREEMENTS BETWEEN STATIONS
TO ACCEPT INTERFERENCE.**

A few petitions challenge the Commission's use of the replication principle in developing the DTV Allotments/Assignments. These petitions essentially restate concerns that were raised in comments to the Sixth Further Notice and specifically resolved by the Commission in the Sixth R&O.^{29/} After considering comments on its service replication proposal, the Commission properly concluded that "providing DTV allotments that replicate the service areas of existing stations offers important benefits for both viewers and broadcasters."^{30/} As the Commission explained, the replication approach embodied in the DTV Allotments/Assignments "will ensure that broadcasters have the ability to reach the audiences that they now serve and that viewers have access to the stations that they can now receive over the air."^{31/}

We strongly support the Commission's replication approach, and again urge the Commission to clarify that a licensee's DTV coverage contour is at least coextensive with its NTSC Grade B contour.^{32/} By providing interference protection out to a station's Grade B contour (or DTV contour, whichever is larger), the Commission ensures that the station's existing viewers -- particularly viewers in rural locales on the fringes of the station's service area -- are not disenfranchised. At the same time, by protecting out to at least the Grade B

^{29/} See Sixth R&O ¶¶ 12-33.

^{30/} Id. ¶ 29.

^{31/} Id.

^{32/} See Broadcasters' Petition at 29-31.

contour, the Commission ensures that the full coverage area of a licensee is protected, allowing it to "grow into" the power level needed to achieve full replication.^{33/}

A. We Support Various Steps To Promote Maximization.

Broadcasters have also repeatedly urged support for the maximization principle and submitted proposed tables that would have implemented this principle more effectively than does the Sixth R&O. Certain Commission decisions, particularly to avoid use of channels 60-69 except in extreme and limited cases, substantially reduced maximization opportunities. Yet, the Commission also established a minimum power of 50 kW for stations that under a strict replication principle would have been subject to lower power limitations. We accepted this decision. And in Broadcasters' Petition we also supported full interference protection for the resulting DTV contours, even though they often greatly exceed the Grade B contours of the paired NTSC stations.^{34/}

We also support another set of accommodations to promote maximization of smaller stations' facilities. In some cases, a station wishing to increase the power or height of its DTV facilities would cause additional interference within part of another station's Grade B contour but for various reasons, the interfered-with station is willing to accept the increased interference. We agree that, in these circumstances, stations should be permitted to negotiate such agreements, and we commend the Commission's decision to permit

^{33/} See id. at 30-31; Sixth R&O ¶ 33; Fifth R&O ¶ 74 & n.161.

^{34/} Another step taken by the Commission to address service disparities was to impose a permanent 1000 kW cap on DTV stations. Broadcasters' Petition did not ask for reconsideration of that decision, although the regional fixes that MSTV and possibly others plan to submit to the FCC by the end of September may propose a few exceptions to the cap in particular circumstances.

maximization based on the consent of affected co-channel or adjacent channel stations.^{35/}

As set forth in Broadcasters' Petition,^{36/} moreover, we urge the Commission to take this consensual approach to facility design one step further -- to permit both intra-market (as the rules now do) and inter-market channel swaps without requiring the initiation of cumbersome rulemaking proceedings. Such a step would facilitate a quicker settlement to outstanding DTV channel problems and increased maximization.

B. We Oppose Additional Erosion Of Interference Protection Standards.

In the absence of such agreements, disenfranchisement of existing viewers' service due to new DTV-generated interference would be contrary to Commission policy and detrimental to the public interest. To this end, the Commission should at the outset continue to use the F(50,10) signal statistics as the standard for determining acceptable interference at the affected station's Grade B contour.^{37/}

A few petitioners, seeking to trade an increase in interference to a UHF NTSC station's Grade B contour for an increase in coverage for a UHF DTV station, have proposed to reduce the interference protection provided throughout a station's Grade B contour (and often throughout a significant portion of such a station's service area).^{38/} They would use

^{35/} Sixth R&O ¶ 31 (new § 73.622(f)). See also Viacom Petition at 6, 8.

^{36/} Broadcasters' Petition at 25-26.

^{37/} For the definition of coverage or interference contour, see TASO Report 1959 Part IV; International Radio Consultative Committee ("CCIR") Reports (1980-1990), Volume V (Recommendation 370-4 & Report 239-5) and Volume XI (Report 485-1); 47 C.F.R. Parts 73 & 74.

^{38/} See ALTV Petition; Sinclair Petition; Viacom Petition; Petition for Reconsideration of Paxson Communications Corp. *et al.*, MM Docket No. 87-268 (June 13, 1997).

the F(50,10) signal statistics to evaluate interference at the Grade A contour and the more lenient F(50,50) signal statistics for evaluating interference at the Grade B contour.

It is important to understand the meaning of these engineering concepts in evaluating the impact of such a proposal. Use of the F(50,10) signal statistics produces a contour where 50% of the locations receive an unacceptable picture 10% of the time. Use of the F(50,50) signal statistics produces a contour where 50% of the locations receive an unacceptable picture *half* of the time. The degradation of the picture to such a large extent, so much of the time, is of particular concern for rural Americans who depend especially heavily on their broadcast television service. As shown above, neither the Congress nor the Commission has been willing to sacrifice the public interest benefits of rural service in other contexts. Unquestionably, substitution in the Commission's rules of the F(50,50) standard in lieu of the longstanding use of the F(50,10) standard should not be countenanced.

Moreover, it is unclear how the proposal to apply the F(50,50) standard to the Grade B would work in practice. Such application is inconsistent with use of the F(50,10) standard at the Grade A contour because the Grade A and Grade B contours for UHF stations are relatively close together. Applying the F(50,50) interference standard to the Grade B contour would result in a signal at the Grade A that is significantly more interfering than the F(50,10) standard would permit. Thus, compliance with the F(50,10) standard at the Grade A will be virtually impossible if an F(50,50) interference standard is selected at the Grade B. The power increases permitted and the resulting interference effects would differ dramatically depending on which standard were used.

Use of a simple F(50,50) interference standard for the Grade B contour would permit an additional 185 UHF television stations (18% of UHF licensees) to increase power over what is allowable under the maximization approach (which does not permit new interference). The power increases would range from 0.1 to 13 dB with a median increase of 5.01 dB. As a result of the proposal:

- Approximately 1.9 million people would lose acceptable NTSC service.
- New interference to NTSC service would increase from 455,275 sq. km under the traditional FCC method of computing interference to 502,053 sq. km under the F(50,50) Grade B contour proposal. This new interference would affect 610 NTSC stations, causing a 35% increase in interference for these stations.

On the other hand, use of the F(50,10) interference standard for the Grade A would permit an additional 236 UHF television stations (23% of UHF licensees) to increase power over what is allowable under the no-interference maximization approach. The power increases would range from 0.1 dB to 13 dB, with a median increase in 4.0 dB. As a result of the proposal:

- Approximately 1.8 million people would lose acceptable NTSC service.
- New interference to NTSC service would increase from 455,275 sq. km under the traditional FCC method of computing interference to 497,225 sq. km under the F(50,10) Grade A contour proposal. This new interference would affect 737 NTSC stations, causing a 22% increase in interference for these stations.

While use of the F(50,10) interference standard for the Grade A contour would result in somewhat less overall interference and disenfranchisement, the loss of service still would outweigh the benefits conferred on licensees permitted to increase power. Compared to the potential harm to the public interest caused by eroding the F(50,10) Grade B

interference standard, the potential benefits to licensees wishing to increase the power of their DTV stations would not be substantial.

This analysis strongly suggests that the Commission should maintain the approach used as a basis for the DTV Allotments/Assignments. However, it may be appropriate to revisit the standards that are used to protect the NTSC service as the DTV service rolls out and gains viewership and as we gain real-world experience about DTV interference. This reassessment could be done as part of the two-year review process that the Commission has established with respect to DTV regulations.

III. THE COMMISSION MADE A REASONED DECISION TO MAINTAIN THE SECONDARY STATUS OF LPTVS AND TRANSLATORS, WHILE SUBSTANTIALLY REDUCING THE BURDEN OF THE TRANSITION ON THESE STATIONS.

Two petitions lodged a challenge to the Commission's treatment of LPTVs and translators,^{39/} which is tantamount to a challenge of the decision to maintain their secondary status. These petitions claim that the Commission failed to conduct an adequate analysis under Section 307(b) of the Communications Act^{40/} of the impact the DTV Table of Allotments would have on communities losing LPTV or translator service through displacement.^{41/} However, the Commission's decision was consistent with both its statutory

^{39/} "LPTVs" refers to low power television stations and "translators" refers to television translator stations. From time to time, "LPTVs" may be used to reference both LPTVs and translators.

^{40/} 47 U.S.C. § 307(b).

^{41/} See Petition for Reconsideration of the Community Broadcasters Association, MM Docket No. 87-268 (June 13, 1997) ("CBA Petition"); Petition for Reconsideration of Skinner Broadcasting, Inc., MM Docket No. 87-268 (June 13, 1997) ("Skinner Petition").

mandate and its unbroken treatment of LPTVs and translators as secondary services and should be affirmed on reconsideration.

A. The Commission's Decision To Grant Secondary Status To LPTVs And Translators When They Were First Authorized And To Maintain That Status In The Transition To Digital Is Based On Sound Policy Judgments.

The Commission acted reasonably and properly exercised its discretion in determining that it should continue the secondary status of LPTVs and translators, requiring them to give way to full-service DTV stations where necessary.^{42/} Both LPTVs and translators have been secondary services since their creation.^{43/} In the rulemaking proceeding initiated in the late 1970's to establish the LPTV service, the Commission adopted a "fundamental principle" governing this new service: "low power television broadcast stations, like television translators, should enjoy only a secondary status."^{44/} After weighing comments on both sides of the issue, the Commission determined that the public interest was best served by affirming the priority of full-service stations, noting that

^{42/} Second Report and Order/Further Notice of Proposed Rule Making, MM Docket No. 87-268, 7 FCC Rcd. 3340, 3350-51 (1992) ("Second R&O"); Sixth R&O ¶¶ 141-147.

^{43/} See, e.g., Low Power Television and Television Translator Service (Notice of Proposed Rule Making), MM Docket No. 86-286, 1986 FCC LEXIS 3075, ¶ 18 (1986) ("LPTV NPRM II") ("Television translators have always been considered secondary to full service television stations in spectrum priority. This secondary status was continued when the low power television service was instituted.").

^{44/} Future Role of Low Power Television Broadcasting and Television Translators (Notice of Proposed Rule Making), BC Docket No. 78-253, 82 F.C.C.2d. 47, 54-55 (1980) ("LPTV NPRM I"). See also Future Role of Low Power Television Broadcasting and Television Translators (Report and Order), BC Docket No. 78-253, 51 Rad. Reg. 2d (P & F) 476, 486 (1982) ("LPTV R&O") ("First and foremost, we intend to maintain the secondary spectrum priority of low power stations, a policy that assures protection from interference to full service stations."); *id.* at n.23 ("as it is integral to the concept of a secondary service that it yield to a mutually exclusive primary service, we shall not take low power stations into account in authorizing full service stations, . . .").

"the coverage obligations to which we subject full-service stations specifically are designed to ensure maximum service to the public, beyond what we shall require of low power."^{45/}

In the Second R&O in this DTV proceeding, the Commission continued the secondary status of LPTVs and translators.^{46/} The Commission explicitly recognized that, given the limited amount of available spectrum, some LPTVs and translators would be displaced.^{47/} The Commission determined that such displacements would be necessary for the Commission to succeed "in the process of enabling full-service stations that, *by definition, reach much wider audiences than LPTVs and translators*, to bring ATV, a major technological advance in broadcasting, to these audiences on a second channel."^{48/} In the Sixth R&O, the Commission reaffirmed this decision, stating that "during the transition there is simply not enough available spectrum to preserve all existing translators and LPTV stations."^{49/}

Nevertheless, to mitigate the impact of the DTV transition on LPTVs and translators, the Commission amended Part 74 of the Commission's rules to relax the technical standards applicable to these secondary services.^{50/} As a consequence, LPTVs

^{45/} LPTV R&O at 488.

^{46/} Second R&O at 3351.

^{47/} Id.; Sixth R&O ¶ 141.

^{48/} Second R&O at 3350 (emphasis added). The Commission's decision to exclude LPTV's from eligibility for DTV frequencies and to relinquish LPTV stations to full power station's in some circumstances withstood judicial challenge. See Polar Broadcasting, Inc. v. FCC, No. 92-1597 (D.C. Cir. March 24, 1994).

^{49/} Sixth R&O ¶ 141.

^{50/} Id. ¶¶ 142-147.